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Labor Law: Application of a State Remedy by a State Court in an Action Under Section 301 of the Labor Management Relations Act

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will demand *everything* in writing before they undertake liability, and the benefit of immediate accessibility of automobile casualty coverage will be lost.

It is respectfully submitted that *National Indemnity Co. v. Smith-Gandy, Inc.* represents an anomaly in the law, and, in view of the strong public policy in favor of the aspect of automobile insurance it affects, it ought not to be followed.

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LABOR LAW: APPLICATION OF A STATE REMEDY BY A STATE COURT IN AN ACTION UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT

A court is free to use its own procedural rules in an action brought under the substantive law of another jurisdiction. The form of remedy, or remedial rights, are generally thought of as procedural and governed therefore by the law of the forum. However, often the form of remedy is so intertwined with the substantive rights that the court treats it as part of the substantive law of the foreign jurisdiction.[1] This treatment of "procedure" as "substance" involves the problem of making a determination not amenable to any definite test.[2]

An examination of the line of cases leading to and following *Erie v. Tompkins*[3] amply illustrates the problem the federal courts have had in distinguishing between substance and procedure when enforcing state law in diversity of citizenship cases.[4] That state courts in actions based on federal law have similarly struggled has recently been demonstrated in the California Supreme Court.

A carpenters union in California, in an industry affecting interstate commerce, violated the arbitration and no strike clauses in the collective bargaining contract with the employer. The employer brought suit in the state court, and a preliminary injunction was granted against the union. In *McCarroll v. Los Angeles County District Council of Carpenters*,[5] the California Supreme Court affirmed the decision of the lower court. The court conceded that as a result of a recent United States Supreme Court decision, *Textile Workers Union v. Lincoln Mills*,[6] the controlling law of collective bargaining agreements made in interstate commerce is now federal law. The *Lincoln Mills* case dealt with section 301(a) of the Labor Management Relations Act (Taft-Hartley Law) which gives federal district courts jurisdiction to entertain suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting interstate commerce.[7] Subsequent to the passage of this act, the state and federal courts have had concurrent jurisdiction of actions based on such collective bargaining contracts. A state court retains jurisdiction to enforce federal rights unless it is expressly excluded by the Constitution or an act of Congress.[8] Therefore the employer in the *McCarroll* case could have entered a federal court. Had he done so,

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[1] Cook, *Substance and Procedure in the Conflict of Laws*, 42 YALE L.J. 333 (1933).

[2] *Id.* at 349–51.

[3] 304 U.S. 64 (1938). See Tunk, *Categorization and Federalism: Substance and Procedure after Erie Railroad v. Tompkins*, 34 ILL. L. REV. 271 (1939).

[4] 62 STAT. 930 (1948), 28 U.S.C. § 1332 (1952).

[5] 49 Cal. 2d 45, 315 P.2d 322 (1957).

[6] Textile Workers Union v. Lincoln Mills of Alabama, 353 U.S. 448 (1957). See *The Supreme Court, 1957 Term*, 71 HARV. L. REV. 94, 173–79 (1957); Bickel and Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills Case*, 71 HARV. L. REV. 1 (1957).

[7] 61 STAT. 156 (1947), 29 U.S.C. § 185 (1952).

[8] Claflin v. Houseman, 93 U.S. 130, 136 (1876); California v. Zook, 336 U.S. 725 (1949).

however, an injunction could not have been granted. The provisions of the Norris-LaGuardia Act[9] are applicable to suits brought in federal courts under section 301.[10] This act precludes injunctive relief by a court of the United States in labor management disputes except in specified instances. (Re the jurisdictional issue in *McCarroll,* the defendant union contended that its alleged conduct was an unfair labor practice under the Taft-Hartley Act,[11] vesting jurisdiction in the National Labor Relations Board. Such jurisdiction is exclusive.[12] However, the court held that the union's conduct was not such an unfair labor practice. Nor is breach of a collective bargaining agreement alone an unfair labor practice so as to give the NLRB exclusive jurisdiction.[13]) However, the California court in the *McCarroll* case, while recognizing that had the action been brought in a federal court injunctive relief would have been denied,[14] reasoned that, as the Norris-LaGuardia Act is a jurisdictional statute applicable only to federal courts, the remedial powers of state courts were not affected by it.[15] Consequently a state court in exercise of its own procedural rules had power, when enforcing a federal right under section 301, to grant a specific remedy which would not have been available in a federal court.[16]

The dissenting opinion maintained that, as the rights under collective bargaining agreements made in interstate commerce are controlled by federal law,[17] "that law must also measure the remedies available for otherwise the federal law is not being applied."[18] The dissent also pointed out that when a remedy "goes to the very essence" of the right itself, it is more than "mere procedure."[19]

Were the harshness of the remedy the sole criterion for determining whether or not the form of remedy is part of the substantive law, as contrasted with the enforcing court's procedural rules—the view of the dissent in *McCarroll* would appear the correct view in that case. Certainly, injunctive relief is a harsh form of relief in the field of labor-management disputes. However, classification of remedy or other forms of procedure as substantive law in any particular case requires consideration of other equally cogent criteria.[20]

The narrow issue submitted for examination here is whether or not the California court in the *McCarroll* case was correct in holding that in view of the *Lincoln Mills* case, a state court enforcing the collective bargaining agreement was free to use a remedy unavailable in a federal court.[21] The *Lincoln Mills* decision included the Norris-LaGuardia Act as one of the federal labor laws which

[9] 47 STAT. 70 (1932), as amended, 29 U.S.C. §§ 101–15 (1952).

[10] W. L. Mead v. Teamsters Union AFL, 217 F.2d 6 (1954).

[11] 61 STAT. 156 (1947), 29 U.S.C. § 158(a)-(b) (1952).

[12] Lloyd Weber v. Anheuser-Busch, Inc., 348 U.S. 468 (1955); United Packinghouse Workers v. Wilson Co., 80 F. Supp. 563 (1948); Garner v. Teamsters Union, AFL, 346 U.S. 485 (1953); Guss v. Utah Labor Relations Bd., 355 U.S. 1 (1957). For exceptions to this doctrine see United Automobile Workers, CIO v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949); United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 (1954).

[13] Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U.S. 437, 443–44 (1954) (Frankfurter, J., concurring).

[14] 49 Cal. 2d at ...., 315 P.2d at 329.

[15] *Id.* at ...., 315 P.2d at 332.

[16] *Ibid.*

[17] See note 6 *supra.*

[18] 49 Cal. 2d at ...., 315 P.2d at 336.

[19] *Id.* at ...., 315 P.2d at 337.

[20] See notes 1 and 2 *supra.* See Guaranty Trust v. York, 326 U.S. 99 (1942).

[21] See note 10 *supra.*

the federal courts are to refer to in fashioning a body of federal decisional law to be controlling in actions brought under section 301.[22] The question before the court in the *McCarroll* case was this: can a state court when enforcing a federal right in a collective bargaining contract treat the remedy to be given as "procedural?" Whether or not injunctive remedy "goes to the essence" of the substantive right cannot be definitely answered. The best that can be done is to examine a few significant cases in which the United States Supreme Court has limited state courts in the use of their own procedure when enforcing federal law.

First, however, an examination of the instances in which the federal courts now adhere to state procedure when enforcing state rights discloses that the law of the state in which the federal court sits must be followed in such "procedural" matters as statutes of limitations,[23] conflict of law rules,[24] statutes requiring security for costs in stockholder litigation,[25] statutes of frauds,[26] res ipsa loquitur,[27] presumptions,[28] burden of proof rules[29] and local procedural rules which effectively bar enforcement of the claim in the courts of the forum state.[30] The test which the federal courts now use in distinguishing between "substantive" and "procedural" law is that clearly articulated by Justice Frankfurter in *Guaranty Trust v. York.* Referred to as the "significant-outcome" or "outcome-determinative" criterion, it is: A state rule is treated as substantive if "it significantly affects the result of a litigation for a federal court to disregard a law of the state that would be controlling in an action on the same claim by the parties in a state court."[31]

Returning to the enforcement by the state court of federally created rights, while the outcome-determinative test has never been as clearly laid out, the United States Supreme Court decisions indicate that in actions to enforce federal law, federal procedural rules which are outcome-determinative in character are binding on the state courts to the exclusion of their own procedural rules. In 1915, in *Vermont v. White,* an action brought in a state court to enforce a federal right under the Federal Employee's Liability Act, the Supreme Court held that the state court was bound by the federal rule on the question of burden of proof. The Court indicated that while as a general rule the federal and state courts were mutually free to prevail in matters respecting remedy, matters of substance and procedure should "not be confounded." Only as long as the question of remedy involves a mere matter of procedure, and is not one substantially affecting the substantive rights, is a state court free to use its own practice in enforcing federal law.[32] Subsequent holdings have amplified rather than limited this doctrine.[33]

Recently the United States Supreme Court held that a state court had erred in requiring excessive particularity in a complaint alleging negligence under the

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[22] 353 U.S. at 456.

[23] Guaranty Trust v. York, 326 U.S. 99 (1942).

[24] Klaxon Co. v. Stentor Mfg. Co., 313 U.S. 487 (1941).

[25] Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

[26] Macias v. Klein, 203 F.2d 205 (3d Cir. 1953), *cert. denied,* 346 U.S. 827 (1953).

[27] Lobel v. American Airlines, Inc., 192 F.2d 217 (2d Cir. 1951), *cert. denied,* 342 U.S. 945 (1952).

[28] Mark v. City of Ormond Beach, 113 F. Supp. 504 (1953).

[29] Palmer v. Hoffman, 318 U.S. 109 (1943).

[30] Angel v. Bullington, 330 U.S. 183 (1947).

[31] 326 U.S. at 105-06.

[32] 238 U.S. 507 (1915).

[33] Hines v. Lowery, 304 U.S. 555 (1938); Brown v. Gerdes, 321 U.S. 178 (1944).

FELA, although the circumstances were apparently such that the state would not have been condemned for applying the same standards of pleading in an action upon a substantive right created by another state.[34] Even more recently, a state court was held to have erred in denying a jury trial on an issue of fraud in an action under FELA where a federal court would have granted one.[35]

It is true that in the majority of the cases indicated here the federal law which the United States Supreme Court has held binding on the state courts could be expressly found in an act of Congress. However, the federal courts have the power to work out a federal decisional law in cases brought under the "arising under" clause of Article III.[36] The *Lincoln Mills* case was a mandate to the lower federal courts to work out a federal decisional law for labor contracts in interstate commerce. Why should such law be less binding on the state courts than specific statutory law provided by Congress? In *Vermont v. White,* mentioned earlier, the federal "procedural" rule of burden of proof was at that time derived not from a federal statute, but from common law sources by the federal courts. It was held a substantive aspect of the federally created right under FELA and binding on the state court. Indeed, it should be remembered that in the converse situation,[37] the specific holding in *Erie R.R. v. Tompkins* was that in diversity of citizenship cases in federal courts state *decisional* law as well as state statutory law was to be followed. One of the practical results of this decision is that a federal court must follow the state court's interpretation of its own statutes. Analogously, the federal courts having included the provisions of the Norris-LaGuardia Act as a source of rights and liabilities of parties in collective bargaining contracts in interstate commerce,[38] it would appear that a state court, exercising concurrent jurisdiction over an action that could have been brought in a federal court under section 301, must honor those rights. The holding in the *McCarroll* case refused to recognize that such rights existed on the tenuous grounds that they were procedural.

The hesitancy of the United States Supreme Court to establish a precise rule to distinguish "substance" from "procedure" when a state is enforcing a federal right is evidently a result of the palpable impossibility of doing so. Congressional intent is not always clear as to the form of the applicable remedy. Section 301 points this out. In contrast, the formulation of a rule binding on the federal courts enforcing state law is more easily accomplished due to the ability of the Supreme Court to establish incidents of judicial administration and procedural rules binding on the lower federal courts; thus we have the test formulated in *Guaranty Trust v. York.* The doctrine of this case now prevails in the federal courts and has clearly been extended to the ambit of cases involving labor disputes.[39] The pertinence of the policy followed by federal courts in enforcing state rights to questions of policy when a state court enforces federal rights was recognized in the *McCarroll* case. Failure to be influenced by the outcome-determinative test was explained by the court on what appears to be the inaccurate conclusion that a "mere doubt" has been cast on earlier cases. The court cited two cases as authority that a federal court is free to use its own procedure, and therefore remedy, when

[34] Brown v. Western Ry. of Alabama, 338 U.S. 294 (1949).

[35] Dice v. Akron, Canton, and Youngstown R.R., 342 U.S. 359 (1953).

[36] Clearfield Trust Co. v. United States, 318 U.S. 363 (1942).

[37] See notes 23–30 *supra.*

[38] See note 22 *supra.*

[39] Bernhardt v. Polygraphic Co., 350 U.S. 198 (1956).